

DECISION



119531 Wob
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-208095

DATE: September 20, 1982

MATTER OF: E.I. du Pont de Nemours & Company, Inc.

DIGEST:

1. A bid that is properly declared nonresponsive due to inclusion of the phrase "Est. Shipping Date 30 ARO" may not be corrected through mistake-in-bid procedures.
2. A bidder's nationality is irrelevant in determining whether the product which it offers is a domestic end product under the Buy American Act. In any event, there is no purpose to be served by adding a Buy American evaluation factor to a bid on a foreign product when that is the only responsive bid received.

E.I. du Pont de Nemours & Company, Inc. protests denial of its request to correct an error its bid submitted in response to invitation for bids (IFB) No. 38-S-ARS-82 issued by the Agricultural Research Service of the Department of Agriculture. The protester also protests the award made to the successful bidder under this IFB, claiming a violation of the Buy American Act. For the reasons stated below, the protest as to both grounds is denied.

The IFB was for the purchase of an ultracut ultramicrotome, a precision instrument used to cut specimens for study under a microscope, and related equipment. The IFB stated that delivery was desired within 30 days after receipt of the Notice of Award, but that if the bidder could not meet this schedule it could set forth an alternate delivery schedule, which could not extend the delivery period beyond 45 days after receipt of the Notice of Award. The IFB cautioned bidders that "Bids offering such terms and conditions that delivery will not fall within the required period will be considered nonresponsive and

will be rejected." Four bids were received in response to the IFB. The protester's bid contained the phrase "Est. Shipping Date 30 days ARC [after receipt of order]." The contracting officer determined that the phrase rendered the bid nonresponsive and the bid was rejected. Two other bids were also rejected as nonresponsive and award was made to the fourth bidder.

Upon learning that its bid had been rejected, the protester informed the contracting officer that it had intended to bid on the basis of a firm 30-day delivery schedule. It said that inclusion of the quoted phrase was a clerical error, the typist having transcribed the phrase from du Pont's standard commercial quotation form which the company also uses as a "draft form" for preparing bids on Government solicitations. The protester requested that its bid be corrected in accordance with Federal Procurement Regulations (FPR) § 1-2.406.3(a)(3). This request was denied and the protester submitted a timely protest to this Office.

We have consistently held that the determination of whether a bid is responsive to the requirements of a solicitation is to be made on the basis of the bid as submitted and that it is not proper to consider the reasons for the nonresponsiveness, whether due to mistake or otherwise. A.D. Roe Company, Inc., 54 Comp. Gen. 271 (1974), 74-2 CPD 194, and cases cited therein. A nonresponsive bid may not be made responsive by explanation after bid opening. International Salt Company, B-200128, January 7, 1981, 81-1 CPD 142. Mistake-in-bid procedures are not available to cure a nonresponsive bid. J. Jambor Manufacturing, Inc., B-206103, February 4, 1982, 82-1 CPL 93.

Here, du Pont entered on the IFB schedule:

"Acceptance Period 60 Days
Est. Shipping Date 30 Days ARO
F.O.D. Point Destination
Ship Via Truck"

The notation as to the bid acceptance period and F.O.B. point conform to the IFB. As for delivery, however, du Pont entered a shipping date--not a delivery date--which was "estimated" to be 30 days after its receipt of the Government's "order" and it indicated that the equipment would be shipped by truck from Newtown, Connecticut to Stoneville, Mississippi.

We believe this offered time of delivery is so indefinite that it cannot be regarded as a firm commitment to deliver within the period set forth in the IFB, and that the contracting officer properly rejected du Pont's bid as nonresponsive in view of our decision B-170287, August 18, 1970, affirmed upon reconsideration, 50 Comp. Gen. 379 (1970). In that case, we held under circumstances similar to those here that the use of the word "approximately" constituted an exception to the delivery schedule and a failure to state a definite delivery date as required of all bidders by the solicitation. Consequently, having properly determined that the protester's bid was nonresponsive, the contracting officer was correct in denying the protester's request for bid correction.

The protester's second ground of protest is that the award made under this IFB violated the Buy American Act because the awardee is a foreign firm. This ground of protest is also without merit.

The Buy American Act, 41 U.S.C. §§ 10a-10d (1976), creates a preference for domestic source end products in the procurement of supplies for public use. The Act is implemented by regulations requiring bidders to certify that each end product, except those listed by the bidder, is a domestic source end product. FPR § 1-6.104-3. For those items listed as foreign end products, an adjustment is made for purposes of evaluation of the bid by adding to it a factor of six percent (12 percent if the low acceptable domestic bid is that of a small business concern) of the bid for that item. FPR § 1-6.104-4(b).

In this case, the awardee indicated in its bid that it is a corporation incorporated under the laws of the State of Georgia. The protester's assertion that the awardee is a foreign firm is, therefore, not supported by the facts. Moreover, in determining whether a product is a domestic source end product, only the end product itself and its components are considered. FPR § 1-6.102. The bidder's nationality is irrelevant. B-163684, May 1, 1968; Lemmon Pharmacal Company, B-186124, August 2, 1976, 76-2 CPD 110. In any event, even assuming that the items to be supplied by the awardee are foreign end products--and it appears that they are--the award would not violate the Buy American Act. Of the four bids received, three, including that of the protester, were nonresponsive. This left the awardee as the only responsive, responsible bidder. An addition to its bid for evaluation purposes was therefore unnecessary.

The protest is denied.

Harry R. Canfield
Comptroller General
of the United States